

CHAPTER 46
MUTUAL HOLDING COMPANIES

191—46.1(521A) Purpose. This chapter is intended to implement the provisions of Iowa Code Supplement section 521A.14 as amended by 1996 Iowa Acts, House File 2363, to provide for:

46.1(1) The formation of a mutual insurance holding company through an application process subject to regulation by the division of insurance. A domestic mutual insurance company may reorganize by forming a mutual insurance holding company based upon a mutual plan. The reorganized insurance company shall continue, without interruption, its corporate existence as a stock insurance company subsidiary to the mutual insurance holding company or as a stock insurance company subsidiary to an intermediate holding company which is subsidiary to the mutual insurance holding company.

46.1(2) The reorganization of a domestic mutual insurance company by merging its policyholders' membership interests into a mutual insurance holding company and continuing, without interruption, the corporate existence of the reorganized insurance company as a stock insurance company subsidiary to the mutual insurance holding company or as a stock insurance company subsidiary to an intermediate holding company which is a subsidiary to the mutual insurance holding company through an application process subject to regulation by the division of insurance.

46.1(3) An application process for the approval of an initial sale of the shares of the capital stock of a reorganized domestic insurance company or an intermediate holding company, subject to the approval of the division of insurance.

191—46.2(521A) Definitions. As used in this chapter:

"Affiliated person" of another person means:

1. Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting securities of such other person,
2. Any person 5 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person,
3. Any person directly or indirectly controlling, controlled by, or under common control with, such other person, or
4. Any officer, director, partner, copartner, or employee of such other person.

"Commissioner" means the Iowa commissioner of insurance.

"Division" means the Iowa insurance division.

"Domestic mutual insurance company" means an insurance company organized on a mutual plan and incorporated under the laws of Iowa.

"Interested person" of another person means:

1. Any affiliated person of such company,
2. Any member of the immediate family of any natural person who is an affiliated person of such company,
3. Any person or partner or employee of any person who at any time since the beginning of the last two completed fiscal years of such company has acted as legal counsel for such company, or
4. Any natural person whom the commissioner by order shall have determined to be an interested person by reason of having had, at any time since the beginning of the last two completed fiscal years of such company, a material business or professional relationship with such company or with the principal executive officer of such company.

"Intermediate holding company" means a holding company which is a subsidiary of a mutual insurance holding company or part of a holding company system controlled by a mutual insurance holding company pursuant to the provisions of Iowa Code chapter 521A.

"Limited application" means an application by a domestic mutual insurance company for reorganization to a mutual insurance holding company which will hold, at all times, 100 percent of the stock of its insurance subsidiaries.

“Member of the immediate family” means any parent, spouse of a parent, child, spouse of a child, spouse, brother or sister, and includes step and adoptive relationships.

“Mutual insurance holding company” means a holding company organized on a mutual plan and incorporated under the laws of Iowa, resulting from the reorganization of a domestic mutual insurance company pursuant to the provisions of Iowa Code section 521A.14, with one or more stock insurance holding company subsidiaries or stock insurance company subsidiaries. A mutual insurance holding company shall be a person as defined in section 521A.1(7) and shall be subject to the provisions of Iowa Code chapter 521A.

“Plan of reorganization” means a plan to reorganize a domestic mutual insurance company by forming a mutual insurance holding company.

“Section 521A.14” means section 44 of House File 247 as enacted by the 1995 session of the 76th General Assembly.

“Standard application” means an application by a domestic mutual insurance company for reorganization to a mutual insurance holding company which may sell interests in its subsidiaries to third parties.

“Stock” means any security evidencing an equity interest in the issuing entity.

“Stock offering” means any proposed sale, exchange, transfer or other change of ownership of stock or of securities convertible into or exchangeable or exercisable for stock. For the purposes of these rules, “stock offering” shall not mean (1) an offering of preferred stock which is not convertible or exchangeable into common stock and which has no ordinary voting rights or (2) a transfer of stock between any of the following:

- A mutual insurance holding company,
- An insurance company subsidiary of a mutual insurance holding company,
- An intermediate holding company subsidiary of a mutual insurance holding company, and
- An insurance company subsidiary of an intermediate holding company subsidiary to a mutual insurance holding company.

191—46.3(521A) Application—contents—process.

46.3(1) An application shall be designated as either:

- a. A limited application, or
- b. A standard application.

The filing of a limited application shall not preclude the subsequent filing of an application for approval of an initial sale of stock as provided in rule 46.9(521A).

46.3(2) The application shall be filed in triplicate with the commissioner and shall include the following information:

- a. Designation as a limited or standard application.
- b. A plan of reorganization as set forth in 46.4(521A).
- c. A plan to obtain the approval of the policyholders in accordance with the applicant’s articles of incorporation and bylaws. Policyholders shall be given not less than 20 days’ notice of any vote on approval of reorganization.
- d. A copy of the mutual insurance holding company’s proposed articles of incorporation and bylaws specifying all membership rights.
- e. The names, addresses and occupational information of all corporate officers and members of the initial mutual insurance holding company board of directors.
- f. Information sufficient to demonstrate that the financial condition of the applicant will not be diminished upon reorganization.
- g. A copy of the proposed articles of incorporation and bylaws for any insurance company subsidiary or intermediate holding company subsidiary.
- h. A “Form A” filing as described in 191—Chapter 45, Iowa Administrative Code.
- i. An index demonstrating where in the application information supplied in compliance with each of these rules is found.

j. Any other information requested by the commissioner at any time during the course of proceedings.

46.3(3) Upon receipt and review by the commissioner of all information provided pursuant to 46.3(2), a hearing shall be held as provided in Iowa Code section 521A.3, subsection 4, paragraph “b.” The applicant shall present evidence establishing:

a. The application is in compliance with all pertinent Iowa Code sections and administrative rules; and

b. The requirements for a plan of reorganization have been fulfilled.

Notice of the hearing shall be given at least 20 days prior to the hearing by the insurance division by regular mail to all interested parties known to the division.

191—46.4(521A) Plan of reorganization.

46.4(1) A limited application plan of reorganization shall include provisions:

a. Establishing a mutual insurance holding company with at least one stock insurance company subsidiary or one intermediary stock holding company with a stock insurance company subsidiary, the shares of which shall be held exclusively by the mutual insurance holding company.

b. Protecting the interests of existing policyholders.

c. Ensuring immediate membership in the mutual insurance holding company of all existing policyholders of the reorganizing domestic mutual insurance company.

d. Describing a plan providing for membership interests of future policyholders.

e. Describing the number of members of the board of directors of the mutual insurance holding company required to be policyholders.

f. Demonstrating that, in the event of proceedings under Iowa Code chapter 507C involving a stock insurance company subsidiary of the mutual insurance holding company which resulted from the reorganization of a domestic mutual insurance company, the assets of the mutual insurance holding company will be available to satisfy the policyholder obligations of the stock insurance company.

g. Describing a plan how any accumulation or prospective accumulation of earnings by the mutual insurance holding company which is or would be in excess of that determined by the board of directors of the mutual insurance holding company to be necessary shall inure to the exclusive benefit of the policyholders of its insurance company subsidiaries who are members.

h. Describing the nature and content of the annual report and financial statement to be sent to each member.

i. For other matters, as the applicant deems appropriate.

46.4(2) A standard application plan of reorganization shall include provisions:

a. Establishing a mutual insurance holding company with at least one stock insurance company subsidiary or one wholly owned intermediate stock holding company with a stock insurance company subsidiary, the shares of which shall be held exclusively by the wholly owned intermediate holding company.

b. Protecting the interests of existing policyholders.

c. Ensuring immediate membership in the mutual insurance holding company of all existing policyholders of the reorganizing domestic mutual insurance company.

d. Providing for membership interests of future policyholders.

e. Describing the number of members of the board of directors of the mutual insurance holding company required to be policyholders.

f. Demonstrating that, in the event of proceedings under Iowa Code chapter 507C involving a stock insurance company subsidiary of the mutual insurance holding company which resulted from the reorganization of a domestic mutual insurance company, the assets of the mutual insurance holding company will be available to satisfy the policyholder obligations of the stock insurance company.

g. Describing how any accumulation or prospective accumulation of earnings by the mutual insurance holding company, which is or would be in excess of that determined by the board of directors

of the mutual insurance holding company to be necessary, shall inure to the exclusive benefit of the policyholders of its insurance company subsidiaries who are members.

h. Describing the nature and content of the annual report and financial statement to be sent to each member.

i. Describing the applicant's plan for a stock offering in accordance with the provisions of rule 46.109(521A) below.

j. Describing other relevant matters the applicant deems appropriate.

46.4(3) With regard to either a limited or standard application, the plan of reorganization submitted to the commissioner shall demonstrate:

a. Policyholder interests are properly preserved and protected.

b. The plan is fair and equitable to policyholders.

c. The financial condition of the applicant will not be diminished.

191—46.5(521A) Duties of the commissioner.

46.5(1) The commissioner shall at all times retain jurisdiction over the mutual insurance holding company and its intermediate holding company subsidiaries with stock insurance company subsidiaries.

46.5(2) Following the hearing provided in 46.3(3) the commissioner shall, by order, approve, conditionally approve, or deny an application. The commissioner may require, as a condition of approval of the proposed reorganization, such modifications of the proposed plan of reorganization as the commissioner finds necessary. The applicant shall accept such required modifications by filing appropriate amendments to the proposed plan of reorganization with the commissioner within 30 days of the date of the order of the commissioner requiring such modifications. If the applicant does not accept such required modifications by failing to file the required amendments to the proposed plan of reorganization within 30 days, the proposed reorganization shall be deemed denied.

46.5(3) An approval or conditional approval of a plan of reorganization shall expire if the reorganization is not completed within 180 days unless such time period is extended by the commissioner upon a showing of good cause.

46.5(4) The commissioner may revoke approval or conditional approval of an applicant's plan of reorganization in the event the commissioner finds the applicant has failed to comply with the plan of reorganization. The commissioner may compel completion of a plan of reorganization pursuant to Iowa Code section 521A.9 unless the plan is abandoned in its entirety, in accordance with the applicant's provisions for governance. The commissioner shall retain jurisdiction over the applicant until a plan of reorganization has been completed.

46.5(5) Upon completion of all elements of a plan of reorganization, the applicant shall provide a notice of completion to the commissioner.

191—46.6(521A) Regulation—compliance.

46.6(1) Mutual insurance holding companies shall comply with the provisions of Iowa Code chapter 521A except as expressly provided herein.

46.6(2) No regulatory standards are waived during the pendency of an application for a plan of reorganization.

46.6(3) Mergers and acquisitions by a mutual insurance holding company must be approved by the commissioner pursuant to Iowa Code chapters 521 and 521A. At such time as a mutual insurance holding company acquires or plans to acquire more than 50 percent of a stock insurance company, the mutual insurance holding company shall submit to the commissioner a plan describing any membership interests of policyholders.

46.6(4) Each mutual insurance holding company shall supply to the insurance division, by April 1 of each year, an annual statement consisting of the following:

- a.* An income statement.
- b.* A balance sheet.
- c.* A cash flow statement.
- d.* Complete information on the status of any closed block formed as a part of a plan of reorganization.
- e.* An investment plan covering all assets.
- f.* A statement disclosing any intention to pledge, borrow against, alienate, hypothecate or in any way encumber the assets of the mutual insurance holding company.

46.6(5) At least 50 percent of the generally accepted accounting practices (GAAP) net worth of a mutual insurance holding company shall be invested in insurance company subsidiaries.

46.6(6) No policyholder who is a member of a mutual insurance holding company shall receive on account of such membership interest any payment of a policy credit, dividend or other distribution unless such payment has been approved by the commissioner. The commissioner, after a public hearing as provided in Iowa Code section 521A.3(4) "b," if satisfied the proposed payment is fair and equitable to policyholders who are members, may approve the proposed payment and may require as a condition of such approval modification of the proposed payment as the commissioner finds necessary for the protection of such policyholders.

191—46.7(521A) Reorganization of domestic mutual insurer with mutual insurance holding company. A domestic mutual insurance company may apply to reorganize by merging its policyholders' membership interests into a mutual insurance holding company by filing with the commissioner a joint application with the mutual insurance holding company complying with the provisions of 46.3(521A).

191—46.8(521A) Reorganization of foreign mutual insurer with mutual insurance holding company. A foreign mutual insurance company, or a foreign health service corporation, which if a domestic corporation would be organized under Iowa Code chapter 514, may apply to reorganize by merging its policyholders' membership interests into a mutual insurance holding company by filing with the commissioner a joint application with the mutual insurance holding company complying with the provisions of 46.3(521A).

191—46.9(521A) Mergers of mutual insurance holding companies. A mutual insurance holding company may apply to merge with another mutual insurance holding company by filing with the commissioner a plan of merger and complying with the provisions of Iowa Code chapters 521 and 521A.

191—46.10(521A) Stock offerings.

46.10(1) No stock offering by a mutual insurance holding company, an insurance company subsidiary of a mutual insurance holding company, an intermediate holding company subsidiary of a mutual insurance holding company, or an insurance company subsidiary of an intermediate holding company subsidiary to a mutual insurance holding company shall occur without the prior approval of the commissioner. The commissioner's approval may be obtained only through the application and hearing process described below.

46.10(2) Every application for approval of a stock offering shall contain the following information:

- a. A description of the stock intended to be offered by the applicant, including a description of all shareholder rights.
- b. The total number of shares authorized to be issued, the estimated number the applicant requests permission to offer, and the intended date or range of dates for the offer.
- c. A justification for a uniform planned offering price or a justification of the method by which the offering price will be determined.
- d. The name or names of any underwriter, syndicate member or placement agent involved and, if known, the name or names of each entity, person, or group of persons to whom the stock offering is to be made who will control 5 percent of the total outstanding class of shares, and the manner in which the offer is to be tendered. If any such entity or person is a corporation or business organization, the name of each member of its board of directors or equivalent management team shall be provided along with the name of each member of the board of directors of the offeror. Copies of any filings with the Securities and Exchange Commission disclosing intended acquisitions of the stock shall be included in the application.
- e. A description of stock subscription rights to be afforded members of the mutual insurance holding company in conjunction with the stock offering.
- f. A detailed description of all expenses to be incurred in conjunction with the stock offering.
- g. An explanation of how funds raised by the stock offering are to be used.
- h. Any other information requested by the commissioner.

46.10(3) No application regarding a planned stock offering shall be approved unless the plan contains provisions:

- a. Prohibiting officers, directors, and insiders of the mutual insurance holding company and its subsidiaries and affiliates from purchase or ownership of shares of the stock offering, or issuance of stock options to or for the benefit of such officers, directors and insiders, for a period of at least six months following the first date the offering was publicly and regularly traded. This paragraph shall not be construed to limit the rights of officers, directors and insiders from exercising subscription rights generally accorded members of the mutual insurance holding company, except that, pursuant to such subscription rights, the officers, directors and insiders of the mutual insurance holding company and its subsidiaries and affiliates may not purchase or own, in the aggregate, more than 5 percent of the stock offering for a period of at least six months following the first date the offering was publicly and regularly traded.
- b. Requiring a majority of the members of the board of directors of the mutual insurance holding company to be persons who are not interested persons of the mutual insurance holding company or of an affiliated person of such company. The commissioner may waive this requirement upon a showing of good cause.
- c. For the mutual insurance holding company to adopt articles of incorporation prohibiting any waiver of dividends from stock subsidiaries except under conditions specified in its articles of incorporation and after approval of the waiver by the board of directors of the mutual insurance holding company and the commissioner.
- d. Requiring that, after the initial stock offering by an insurance company subsidiary of a mutual insurance holding company, an intermediate holding company subsidiary of a mutual insurance holding company, or an insurance company subsidiary of an intermediate holding company subsidiary to a mutual insurance holding company, the boards of directors of each such insurance company or intermediate holding company include at least three directors who are not interested persons of the mutual insurance holding company.
- e. Establishing, within the board of directors of the corporation offering stock, a pricing committee consisting exclusively of directors who are not interested persons whose responsibility is to evaluate and approve the price of any stock offering.

46.10(4) An insurance company subsidiary of a mutual insurance holding company, an intermediate holding company subsidiary of a mutual insurance holding company, or an insurance company subsidiary of an intermediate holding company subsidiary to a mutual insurance holding company may issue more than one class of stock provided, however, that at all times a majority of the voting stock is held by the mutual insurance holding company or its subsidiary and, provided further, that no class of common stock may possess greater dividend or other rights than the class held by the mutual insurance holding company or its subsidiary.

46.10(5) The commissioner may hire, at the applicant's expense, attorneys, actuaries, accountants, investment bankers and other experts as may reasonably be necessary to assist the commissioner in reviewing the application.

46.10(6) The commissioner may, in the commissioner's discretion, hold a public hearing regarding any application for approval of a stock offering. Upon receipt of an application for approval of a stock offering which includes an initial offering of stock, the commissioner shall hold a public hearing at which all interested parties may appear and present evidence and argument regarding the applicant's planned offering. The commissioner shall provide the applicant adequate notice of the hearing, such that applicant can provide notice of the hearing to members of the mutual insurance holding company, in a manner approved by the commissioner, not less than 20 days prior to the hearing. Following the hearing, the commissioner may approve, conditionally approve, or deny the application. The commissioner may approve the plan if:

- a. The offering complies with these rules and other provisions of law,
- b. The method for establishing the price of a stock offering is consistent with generally accepted market or industry practices for establishing stock offering prices in similar transactions, and
- c. The plan and offering will not unfairly impact the interests of members of the mutual insurance holding company.

None of the foregoing shall be deemed to prohibit the filing of a registration statement with the Securities and Exchange Commission prior to or concurrently with the giving of notice to members.

46.10(7) Notwithstanding the provisions of 46.10(1) to 46.10(6) above, stock offerings which are not an initial stock offering, and which offer stock regularly traded on the New York Stock Exchange, the American Stock Exchange, or another exchange approved by the commissioner, or designated on the national association of securities dealers automated quotations—national market system (NASDAQ), may be sold in accordance with the following procedure: If a mutual insurance holding company, an insurance company subsidiary of a mutual insurance holding company, an intermediate holding company, or an insurance company subsidiary of an intermediate holding company intends to make a stock offering which would be governed by the provisions of this subrule, that entity shall deliver to the commissioner, not less than 30 days prior to the offering, a notice of the planned stock offering and information regarding (a) the total number of shares intended to be offered, (b) the intended date of sale, (c) evidence the stock is regularly traded on one of the public exchanges noted above, and (d) a record of the trading price and trading volume of the stock during the prior 52 weeks. The commissioner shall be deemed to have approved the sale unless, within 30 days following receipt of such notice, the commissioner issues an objection to the sale. If the commissioner issues an objection to the sale, the procedures set forth in subrule 46.10(2) shall be followed to determine whether the commissioner approves of the proposed sale.

46.10(8) Approval of a stock offering obtained under either subrule 46.10(6) or 46.10(7) above shall expire 90 days following the date of the approval or deemed approval, except as otherwise provided by order of the commissioner.

46.10(9) No prospectus, information, sales material or sales presentation by the applicant, or by any representative, agent or affiliate of the applicant, shall contain a representation that the commissioner's approval of a stock offering constitutes an endorsement of the price, price range, or any other information relating to the stock.

46.10(10) The following practices are prohibited:

- a.* Borrowing funds from the mutual insurance holding company, or its subsidiaries and affiliates, to finance the purchase of any portion of a stock offering.
- b.* Payment of commissions, “special fees” and any other special payments or extraordinary compensation to officers, directors, interested persons and affiliates, for arranging, promoting, aiding or assisting in reorganization to a mutual insurance holding company, or for arranging, promoting, aiding, assisting or participating in the structuring and placement of a stock offering.
- c.* Entering into an understanding or agreement transferring legal or beneficial ownership of stock to another person in avoidance of these rules.

191—46.11(521A) Regulation of holding company system.

46.11(1) A mutual insurance holding company, and its subsidiaries and affiliates, shall be subject to all provisions of Iowa Code chapter 521A, “Insurance Holding Company Systems.” In addition to the provisions of that chapter, all material transactions, as that term is defined in Iowa Code chapters 521A and 521D, between subsidiaries and affiliates of the mutual insurance holding company must be approved by a majority of the directors of the mutual insurance holding company as being both *(a)* fair and reasonable and *(b)* made on terms and conditions not less favorable than those available from unaffiliated third parties.

46.11(2) If the commissioner finds, after notice and hearing, that activities within a mutual insurance holding company system have violated provisions of the Iowa Code, have violated administrative rules, or act to circumvent requirements or prohibitions contained in the Iowa Code or administrative rules, the commissioner may prohibit or order rescission of any transaction relating to those activities.

191—46.12(521A) Reporting of stock ownership and transactions.

46.12(1) Any director or officer of a mutual insurance holding company, its subsidiary or affiliate, who acquires directly or indirectly the beneficial ownership of any security issued by any member of the mutual insurance holding company system shall, within 15 days following the transaction, file with the insurance commissioner a statement of the transaction on the form prescribed by the commissioner.

46.12(2) A mutual insurance holding company, and its subsidiaries and affiliates, shall file with the commissioner, within 15 days of receipt, copies of Form 3, Form 4 and Schedule 13D, or any equivalent filings, such filings made under the Securities Exchange Act of 1934, as amended.

These rules are intended to implement Iowa Code Supplement section 521A.14 as amended by 1996 Iowa Acts, chapter 1014.

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